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AUG 09 2004

In re Application of
Reinhard Noack
Application No. 10/075,873
Filed: February 13, 2002
Attorney Docket No. ANI-100US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 22, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to submit the issue/publication fee in a timely manner in reply to the Notice of Allowance mailed November 13, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on February 14, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

The above-identified application became abandoned for failure to timely pay the issue/publication fee. In an application or patent, abandoned or lapsed for failure to pay the issue/publication fee or any portion thereof, the required reply must be the payment of the issue/publication fee or any outstanding balance thereof. See MPEP 711.03(c)(III)(A)(1).

Therefore, the filing of a request for continued examination is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). Petitioner is advised that the issue fee paid on June 21, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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By hand: Customer Window located at:

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By fax: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.



Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).